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CONTRACTUAL FRAMEWORKS IN CROSS-BORDER MERGERS AND ACQUISITIONS: LEGAL ISSUES, DEAL STRUCTURES, AND REGULATORY CHALLENGES IN INDIA

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Abstract

Cross-border mergers and acquisitions (M&As) have emerged as a defining feature of India's evolving corporate landscape, driven by economic liberalization, globalization, and the strategic imperatives of multinational enterprises. This paper examines the distinct contractual issues that arise in cross-border M&A transactions involving Indian entities, tracing the transaction lifecycle from pre-contractual documentation and due diligence through deal structuring, definitive agreement negotiation, and post-closing compliance. Drawing on the regulatory framework established under the Companies Act 2013, the Foreign Exchange Management Act, and the Foreign Exchange Management (Cross Border Merger) Regulations 2018, the paper analyses key contractual mechanisms including representations and warranties, indemnity provisions, Material Adverse Change clauses, conditions precedent, and dispute resolution arrangements along with landmark Indian cases and significant recent transactions. The paper concludes that while India's legal framework has progressively liberalized to accommodate cross-border transactions, successful deal execution demands meticulous contractual drafting, careful choice of governing law, and robust dispute resolution mechanisms capable of operating across multiple legal regimes.

Keywords: *Cross-Border M&A, India, Deal Structuring, Representation &Warranty, Indemnity, Transactions*

I. Introduction

M&As are essential strategic mechanisms that help companies to adjust and survive in a more globalized economy. In the world of business, companies are in the process of

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restructuring and reorganizing their business in different types of consolidation in order to react to the changing market environment. This change can be greatly contributed by globalization, which has made domestic and international markets more interdependent, forcing companies to take more integrated and robust approaches. By merging with or acquiring a foreign enterprise, a firm can enter new markets, access technology or skilled personnel, and achieve economies of scale that are difficult to attain domestically.[2]

In recent years, with its large and growing economy, India has also emerged as an increasingly significant destination for M&A transactions, attracting significant international investment. India's push to liberalize its economy and update its legal framework has facilitated many foreign investments in vital industries like retail, financial services, pharmaceuticals, and telecommunications along with major inbound deals and outbound moves which underscored the growing importance of M&A specifically cross border M&A to India's corporate landscape.

Till today, India has entered into various outbound acquisitions with countries like United Kingdom, the United States, Canada and continental Europe. In a similar way, Japanese, Swiss, German, Singaporean and American global companies have also organized complicated inbound transactions to enter the Indian market. Both of which present their own contractual issues, and both combined present India as one of the most educative jurisdictions in the world to study the actual operation of cross-border M&A contracts.

It follows four overlapping stages: preparation and due diligence before the transaction; how the parties decide and design the overall transaction structure; definitive agreement and closing; and post-closing compliance and integration. Under these stages, the paper will analyse the distinct contractual issues that emerge during cross-border transactions which are unique or rather different in comparison to domestic transactions.[3]

II. What is Cross Border Merger and Acquisition

"Cross-border M&A" in a general sense are understood as M&A transactions where the combining entities are incorporated in different jurisdictions where one entity is domestic and one entity is foreign. In India it is defined under Section 2(iii) of Foreign Exchange Management (Cross Border Merger) Regulations, 2018[4] and is governed by Section 234

[2] Bird & Bird, Cross-Border M&A <https://www.twobirds.com/-/media/new-website-content/insights/pdfs/cross-border-ma-final.pdf> accessed 27th December 2025.

[3] Jalak Jain, 'Cross-Border Mergers and Acquisitions: Can They Be Sustainable in the Long Run?' (2013) 2(3) Journal of Legal Research and Juridical Sciences <www.jlrjs.com>.

[4] Foreign Exchange Management (Cross Border Merger) Regulations 2018, reg 2(iii).

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of the Companies Act, 2013 which was notified by the Ministry of Corporate Affairs on 13 April, 2017, and allows both inbound and outbound mergers of Indian and foreign companies subject to prior approval of the Reserve Bank of India (RBI).[5] The introduction of Section 234 is the result of the Irani Committee who have published a report in 2005, by stating that "A forward looking law on mergers and amalgamations needs to also recognize that an Indian company ought to be permitted with a foreign company to merger."[6]

Basically, merger occurs when two firms combine their assets and operations to establish a new legal entity with an objective to achieve common objectives through incorporation (A + B = A) or through combination (A + B = C). Whereas, in an acquisition, the acquirer firm purchases the shares or assets of the target firm, or gain influence over the target firm with the control of these assets and operations being transferred to the acquirer firm, while the shareholders of the target firm end their ownership of the firm and the acquired firm becomes an affiliate or subsidiary of the acquirer.[7] The same applies when the transaction happens overseas involving entities belonging to different jurisdictions.

Conclusively, a cross-border merger is a merger just like a domestic merger, only that the involved parties are incorporated in two jurisdictions and thus, are regulated by different policies. An example is a merger between a company established in India and one established in the United States would be considered a cross-border merger. Legally, these transactions are complex, requiring adherence to various regulatory environments. But in economic terms, they are a strategic mechanism of consolidation that is geared towards profitability, competitive strength, and overall economic standing of the merging entity.

III. Deal Structure and Strategic Planning

Prior to one representation being negotiated or a condition precedent formulated, parties to a cross-border M&A need to answer a fundamental question: What type of a deal is this to be? The deal form used in a cross-border transaction is about identifying a form that can operate within the regulatory framework of at least two legal systems at the same time, generate a commercially viable outcome, and can actually be written in a manner that the parties in the different legal backgrounds can understand and comply with. These trade-

[5]Ministry of Corporate Affairs, Notification No S.O. 1182(E) dated 13 April 2017.
[6]Ministry of Corporate Affairs, Report on Company Law (J. J. Irani Committee Report) (2005).
[7] Aprajita Rizvi, Mergers and Acquisitions in India: legal framework and emerging issues (2025) 12(7) International Journal of Innovative Research and Technology (IJIRT).

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offs have been well-mapped in a domestic deal but are complicated in a cross-border deal as two or more legal systems are involved.[8]

A. Types of Deal Structures

(a) **Share Purchase:** The most popular deal structure in India in inbound and outbound cross-border acquisitions is a share purchase. The shares of the target company are purchased by the buyer directly by the selling shareholders. In this, it does not make any change in the target company itself. The only difference is the owner of the shares. Due to this continuity, an operationally most smooth method of acquiring a business as a going concern is through share purchase. Under the Indian context, a share acquisition will result in the transfer of the shares of the target company and must be priced in at fair market value as required by the FEM (NDI) Rules, 2019, by a SEBI-registered valuer or through a discounted cash flow method.[9]

(b) **Asset Purchase:** The most widely used strategy in cross-border scenario is asset purchase where the purchaser wishes to purchase a particular business operation in India without the regulatory history of the Indian entity. This is particularly relevant when the Indian company has pre-existing FEMA non-compliances, pending tax demands, or labour disputes that the buyer simply does not want to acquire. In India, asset purchases arise in specific contexts. Distressed asset acquisitions, where a buyer wants a profitable division of a company in financial difficulty without inheriting the parent's debts or Carve-out transactions, where a foreign company wants to acquire a specific business unit from an Indian conglomerate. In that regard, the acquirer needs to either create a new Indian subsidiary to be the recipient of the assets, utilize an existing Indian affiliate, or to channel the acquisition in a joint venture format.[10]

(c) **Mergers and Amalgamations:** In the case of multinational companies merging their business with an international company, Section 234 of the Companies Act, 2013, read with the FEMA Cross Border Regulations, 2018, is the

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[8]Sakshi Singh Rawat, Cross-border M&A Regulations: Legal Checklist of transactions in India (LawCurb, 8 October 2025) <https://www.lawcurb.in/post/cross-border-m-a-regulations-legal-checklist-for-india-focused-transactions> Accessed 5th February 2026.

[9]Lexology, 'Key SPA Protections for Cross-Border Buyers' (6 November 2025) <https://www.lexology.com/library/detail.aspx?g=e43921e6-215c-40ef-9702-198ca3f40035> accessed 5th February 2026.

[10]Mark Davies and Sawyer Duncan, 'Cross-Border Carve-Out Transactions: Due Diligence and Purchase & Sale' (2019) 13(3) Deal Lawyers 9.

comfortable path that can be taken. Particularly, the 2024 amendment of Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules has provided a Fast-Track Merger route to foreign holding companies to merge with their Indian wholly-owned subsidiaries enabling the reverse flip structures to Indian startups that had incorporated offshore holding companies to raise funds.[11]

IV. Transaction Preparation and Due Diligence

A. Anatomy of Pre-Transaction Documentation

Even before one line of a Share Purchase Agreement (SPA) has been negotiated, a preliminary contractual relationship between the parties to a cross-border M&A transaction is in place, which has very often been undervalued in legal and commercial terms. This pre-transactional stage is regulated by a set of soft-law instruments including the letter of intent (LOI), the term sheet, the memorandum of understanding (MOU) and the confidentiality or non-disclosure agreement (NDA). Although these documents are usually thought to be non-binding as a whole, the assumption is overly exaggerated.

The NDA, as an example, is a fully binding and enforceable agreement in the Indian Contract Act, 1872. The main purpose of it is to establish a space of trust where information sharing is possible without the threat of being commercially exploited. The NDA gains an additional complex in the situation of cross-border transactions since the information provided in the course of due diligence can be subject to data protection laws in different jurisdictions, including the Digital Personal Data Protection Act (India), the General Data Protection Regulation (GDPR) in Europe or state-level privacy laws in the United States.

Term sheets and LOIs, on the contrary, are more subtle legal documents. The Indian courts have generally adhered to the stand that the LOIs are not enforceable contracts as they include the language that the transaction is "subject to the execution of definitive documentation". Nevertheless, some obligations contained in term sheets (like exclusivity obligations, break-up fees, reverse termination fees) are regularly considered as separately binding.

In the cross-border scenario, the decision of what law to apply, even in term sheets,

[11] LawCrust Legal Consulting, 'Challenges and Considerations of Cross-Border M&A India' (September 2025) <https://lawcrust.com> accessed 6th February 2026.

whether it be the English law or the Indian law, is literally a commercial issue. In English law, such as in the Misrepresentation Act, 1967, English law gives more powerful remedies in case of misrepresentation in the course of pre-contractual negotiations, and Indian contract law fails to achieve the same. It is one of the considerations advanced by advanced foreign acquirers on the first hand of negotiations.

B. Purpose, Scope, and Complexity of Cross Border Due Diligence

Due diligence of an Indian cross-border transaction is not a standardised task in the form of a checklist, but an investigation, which must be filtered to what the buyer does not know. It is a necessary process that helps in acquiring companies to check the financial, legal and operational position of the target company prior to closing the deal and possible deal-breakers that may affect the transaction.[12] This organized approach is further complicated by the fact that the acquiring organization has to manoeuvre through the legal system of the target country and at the same time the home country legal system, as well as bilateral or multilateral treaties.[13]

The normal extent of legal due diligence in an Indian cross-border deal includes:

(i) checking of incorporation documents, Memorandum of Association (MOA) and Articles of Association (AOA), agreement of shareholders;

(ii) review of the board structure, voting rights, and governance policies to make sure that they are in line with local corporate laws;

(iii) a review of minutes of board and shareholder meeting to determine whether there are any previous approvals or resolutions of importance;

(iv) a survey of all material contracts, such as customer contracts, supplier contracts and any contracts with any related parties or government counterparties;

(v) determination of any limitations on foreign ownership and all change-of-control provisions that can be occasioned by the acquisition;

(vi) checking on intellectual property ownership and registration;

(vii) review of all current and exposed litigation and regulatory actions;

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[12]Maheshwari & Co., ‘Due Diligence in Cross-Border Mergers and Acquisitions’ (Lexology, 7 March 2025) <https://www.lexology.com/library/detail.aspx?g=c389c20b-14dc-4e91-b03c-d0cea615e1d5> accessed 9th February 2026.

[13]Davies and Duncan, (n 10).

(viii) title and lease investigation of real property, employment due diligence, more especially with reference to the adherence to the relevant labour codes, provident fund, gratuity and ESOP requirements; and

(ix) tax compliance (income tax, GST and transfer pricing).[14]

The volume of work that must be done is thus far greater than a domestic transaction, and the purchaser must consider it in the light of all these.

Moreover, Investors and targets tend to perceive cross-border transactions in terms of risks. It is not just calculus with regard to how an investment will be made, but also with regard to the degree of diligence that will be undertaken, when the deal will be closed and what regulatory filings must be made, or should be made, to close the deal effectively. This is a risk-based approach on which diligence has been and is being carried out on cross-border transactions.[15]

Nonetheless, one particular issue with cross-border M&A that foreign acquirers or domestic acquirers would often underestimate is the accessibility constraints to cross-country records. Thus, Virtual Data Rooms (VDRs) have become the new infrastructure of information disclosure in cross-border M&A. A VDR is a password-controlled electronic storehouse which holds all the papers related to the transaction. The VDRs can also be used in multi-jurisdiction transactions, which allow advisors in various countries to conduct simultaneous reviews of the transaction, which in effect collapses geographic distances that would otherwise hinder timely disclosure. Due to the nature of cross-border mergers and acquisitions, establishing safe virtual data rooms can assist in the proper management of due diligence documentation.

V. Allocation of Risk and Definitive Agreements

The definitive agreements in a cross-border M&A transaction, the Shareholders Agreement (SHA), the Share Subscription Agreement (SSA) and the Share Purchase Agreement (SPA) have a weight that their domestic counterparts do not. It has to meet both the legal requirements and market norms of the jurisdiction of the buyer as well as that of the seller and possibly multiple jurisdictions in which the target operates. More fundamentally, it should act as a risk allocating tool of a transaction with information asymmetries, jurisdictional unknowns and a target business whose complete profile cannot be fully

[14] Corrida Legal, 'Mergers and Acquisitions in India: Compliance Checklist' (July 2025) <https://corridalegal.com/mergers-acquisitions-india-legal-guide> accessed 9th February 2026.
[15] Davies and Duncan, (n 10).

checked out by an external party before closing. The stress between these requirements makes each major bargaining aspect of the deal.

A. Representations and Warranties (R&W)

In a cross-border acquisition agreement, representations and warranties (often abbreviated in the industry as 'R&W') play three different roles. They are a disclosure mechanism, whereby the seller must bring to light information that the buyer would not otherwise have been able to access. They are a risk allocation tool, which defines who gets the cost of information which turns out to be inaccurate. And they are a curative trigger, affording the purchaser a right to indemnity or price adjustment in the event that such representations are not true.

The representations and warranties drafting in a multi-jurisdictional transaction are to be done with special care due to a few reasons. R&W of the seller are usually split into two groups: "Fundamental Representations" (due incorporation of the company, title to the shares is being sold, corporate power to enter into the transaction, and capitalisation of the company) and "Business Representations" (financial statements, compliance with taxes, material contracts, employment, IP, litigation, regulatory licences, and FEMA compliance). This is the reason why a seller should be honest to state that it meets the regulatory requirements of the jurisdictions.

Such exposure of the seller to liability under R&W is alleviated through a disclosure exercise, which is a formal process where the seller discloses against the background of the representations, certain facts and circumstances that qualify the accuracy of the representations. In English law practice this is achieved by a formal "Disclosure Letter" to the buyer. However, in Indian practice, it is more typical to have a disclosure of schedules attached to the SPA.[16]

Example: In case a seller makes a statement to the effect that the Company is not a party to any litigation, and the company is actually facing an impending income tax demand which the seller does not disclose, the buyer can pursue an indemnity claim against the company upon closing. But when the seller makes the disclosure of the impending tax demand in the disclosure schedules pursuant to the said warranty, then such representation would be qualified and the buyer can only claim a specific indemnity of the risk disclosed, which can be negotiated and incorporated in the

[16] Economic Laws Practice, 'Representations, Warranties, Indemnities and Insurance in M&A' in PM Devaiah (ed), India M&A: Practice Guides (2nd edn, 2023).

SPA.[17]

B. Indemnity and Warranty & Indemnity (W&I) Insurance

One of the most important components of the majority of M&A transactions is indemnities. In their simplest form, indemnity clauses are a contractual commitment usually by the seller to defend the buyer, innocent of any loss, liability, or expense incurred as a result of previously identified risks. In cross-border setting, where the buyer, and target are in separate legal, regulatory, and cultural settings, "knowing what to ask" becomes as important as the information itself. The key contractual device by which the parties divide those unresolvable uncertainties between them, which may crystallise after closing is therefore the indemnity provisions.

(a) Buyers Indemnity: On the part of the buyer, the indemnity cover is necessary since the risks of purchasing a foreign company cannot be fully determined or measured under constrained due diligence time frames. The characteristics of cross-border targets include intricate group structures, shared assets, unrecorded intra-group structures, and distributed IP ownership. To that effect, the buyers demand wide indemnities, which encompass more than disclosed risks, but also the latent liabilities, which were not reasonably ascertainable before closing.

(b) Sellers Indemnity: The indemnity strategy by the seller is influenced by the need to have finality and minimise the exposure to post-closing liability. It is based on strong disclosures and close-written representations and warranties to rule out known risks in the claims of indemnity. Broad indemnities are often opposed by sellers, in situations where the full disclosure is restricted by legal or practical considerations. They negotiate standard limitations such as caps, survival periods, thresholds, and exclusions for disclosed matters to ensure predictability of economic outcomes.[18]

In a recent amendment made on 20 May 2016 to the exchange control framework of India (FEMA) parties are now allowed to make indemnity arrangements of up to 25% of the consideration of a transaction by means of escrows or holdbacks over a maximum duration of 18 months. However, the implementation of claims based on indemnity between a resident and non-resident may still require prior authorization

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[17]Ibid.

[18]Morse Law, 'Indemnification Caps and Baskets in M&A Transactions' (21 October 2024) <https://www.morse.law/news/indemnification-caps-and-baskets-in-ma-transactions> accessed 16th February 2026.

by the Reserve Bank of India (RBI) or upheld by an arbitral award or court decree enforceable in India.[19]

Warranty and Indemnity Insurance: Further, to mitigate the indemnity risks in cross-border Indian deals, W&I Insurance is rapidly emerging as one of the more popular transaction risk products in India, particularly by private equity investors seeking clean exits who have limited inclination to provide extensive indemnities. In recent years, the number of insurers offering M&A insurance in Asia has doubled. It allows sellers to limit their post-closing liability and enables a clean exit while assuring buyers that losses from warranty breaches will be covered by a third party with a higher likelihood of payment.[20]

C. Material Adverse Change Clause

The MAC clause is specifically designed for the cross-border context. It exists because there is an interval between signing and closing during which the target business may change, and the longer and more complex that interval (which is invariably longer and more complex in a cross-border deal), the greater the risk that the change will be material. In practical terms, it allows the buyer to walk away without paying a termination fee if something materially bad has happened to the target business during the interim period. In Indian cross-border deals, drafting the MAC clause is a particularly delicate exercise because there is very limited Indian case law on what constitutes a MAC, and the enforceability standard under Indian contract law is notably different from the Delaware or English law standard that most template MAC clauses are designed around. [21]

Under Indian law, specifically under the Indian Contract Act, 1872, the doctrine of frustration under Section 56 provides that a contract becomes void if it becomes impossible to perform. However, MAC clauses in Indian M&A have been challenging to enforce, as courts have held that the threshold of contract frustration or impossibility must be extremely high and mere economic difficulty cannot be a ground to invoke the clause. This means that a buyer trying to use an Indian MAC clause to exit a deal faces a significant doctrinal hurdle.[22]

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[19] Chuhak & Tecson, 'An Overview of Representations, Warranties and Indemnification in M&A' (30 August 2024) <https://www.chuhak.com/an-overview-of-representations-warranties-and-indemnification-in-ma/> accessed 16th February 2026.

[20] Bird and Bird, (n 2).

[21] Ott Aava, 'Risk Allocation Mechanisms in Merger and Acquisition Agreements' (2010) 2 Helsinki Law Review 37.

[22] JSA, 'The Use and Practice of MAC Clauses in India' (14 August 2023) <https://www.jsalaw.com/jsa-

A practical and important consequence of this is that Indian cross-border deals that are governed by English or Singapore law at the SPA level, where MAC clauses have a more developed commercial interpretation, are better positioned from the buyer's perspective than deals governed by Indian law. Where Indian law governs the SPA, the MAC clause must be drafted with even greater precision, expressly addressing: the exact standard of materiality; the duration over which the adverse change must persist; the express carve-outs for market-wide events or regulatory changes; and the remedies available to the buyer.

D. Governing law and Dispute Resolution Clause

(a) Governing Law: There are three main possibilities to the governing law issue in cross-border M&A in India: Indian law, English law, or Singapore law. Indian law is generally demanded by Indian sellers and in dealings with government or public sector organizations. The governing law of complex transactions involving private equity and institutional investors is English law, because of the presence of precedent on M&A-specific questions, including MAC, R&W and earn-outs, and because of the accessibility of the English courts or arbitration-seated in London as the seat of dispute. Another area where Singapore law has made significant strides over the past few years is in transactions involving an Asian context, especially following the rise of Singapore as a leading arbitration centre and its incorporation of much of the English commercial law.[23]

An effective limitation, however, on the governing law option of SPA in case of Indian companies is that some of its provisions, especially those which deal with the mechanics of the transfer of shares, and other FEMA compliance requirements, are obligatorily subject to the Indian law irrespective of the choice of parties with regard to the contract. This gives a hybrid form whereby, say, the R&W and indemnity can be subject to English law, the transfer mechanics and the post-closing reporting requirements are subject to Indian law.

(b) Dispute Resolution: International commercial arbitration has emerged as a dispute resolution mechanism of choice in most of the cross-border M&A

live/the-use-practice-of-mac-clauses-in-india> accessed 16th February 2026.

[23] Global Arbitration Review, 'Challenging and Enforcing Arbitration Awards: India' <https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/india> accessed 20th February 2026.

transactions involving India. The rationale is well-established: (i) it offers a neutral venue which is not controlled by the domestic courts of either party; (ii) arbitral awards are binding in over 160 jurisdictions to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 to which India is a signatory dating back to 1960; (iii) the proceedings are confidential; and (iv) the parties can choose arbitrators with expertise in complex commercial disputes.[24] In this regard, parties usually refer to established arbitral institutions like the Singapore International Arbitration Centre (SIAC), the London Court of International Arbitration (LCIA) or the ICC International Court of Arbitration (ICC) to preside over proceedings. Of the above, SIAC is the most popular when it comes to transactions related to India. However, the enforceability of foreign arbitral awards in India has been a subject of considerable legal development and controversy. The statutory framework for enforcement is contained in Section 48 of the Arbitration Act, which allows an Indian court to refuse enforcement of a foreign award in certain cases. This enforceability dilemma was addressed in the Delhi High Court's landmark ruling in ***Daiichi Sankyo Company Ltd. v. Malvinder Mohan Singh and Others.***[25] Daiichi Sankyo, a Japanese pharmaceutical firm, acquired the Singh group's 100% stake in Ranbaxy Laboratories for approximately USD 4.6 billion in 2008, only to later discover that the sellers had fraudulently concealed ongoing US FDA and Department of Justice investigations against Ranbaxy. An ICC tribunal seated in Singapore awarded Daiichi damages of approximately INR 3,500 crores.[26]

In enforcing the award, the Delhi High Court made three propositions of commercial significance: that judicial review at the enforcement stage is extremely limited; that alleged contraventions of the Indian Contract Act cannot obstruct enforcement unless they violate the 'fundamental policy of Indian law'; and that a consequential damages award was not contrary to Indian public policy, rejecting the argument that Section 73 of the Indian Contract Act

[24]Bar & Bench, 'Is India the Promised Arbitration Hub or an Enforcement/Execution Nightmare?' (May 2024)<https://www.barandbench.com/columns/india-the-promised-arbitration-hub-or-an-enforcementexecution-nightmare> accessed 20th February 026.

[25]Daiichi Sankyo Co Ltd v Malvinder Mohan Singh 2018 SCC OnLine Del 6869.

[26]India Business Law Journal, 'Court Allows Enforcement of Daiichi Sankyo Award' <https://law.asia/court-allows-enforcement-daiichi-sankyo-award/> accessed 24th February 2026.

excluded such losses.[27] The practical lesson for deal practitioners is that arbitral clauses must be complemented by appropriate security arrangements such as escrow, bank guarantees, or asset pledges to ensure that an award, once obtained, can actually be satisfied.

VI. Condition Precedent & Condition Subsequent: The Pre and Post Closing Hiccups

The closing of a cross-border M&A transaction does not simply happen. It is the culmination of a structured sequence of conditions, each of which must be satisfied or waived before the execution and transfer of ownership can occur. Between these two events lies a critical intermediate phase, known as the interim period, governed by conditions that must be either satisfied before a transaction can close or fulfilled after closing to preserve the integrity of the deal. These conditions are classified in law and practice as conditions precedent (CPs) and conditions subsequent (CSs), respectively.[28]

In cross-border Indian transactions, the suite of CP is typically more extensive than in domestic deals, reflecting the additional regulatory touchpoints involved. Standard CPs in a cross-border Indian SPA include:

(i) Statutory Approvals.

(ii) Shareholder Approvals obtained at a general meeting.

(iii) Third-Party Consents under Material contracts of the target company containing change-of-control provisions.

(iv) A representation from the seller that no MAC has occurred in the target's business since the signing date.

The interim period thus provides time for meeting these conditions with the help of a "long stop date" in the agreement, which acts as a maximum deadline for completing the conditions precedent. If conditions precedent is unmet by the long stop date due to the fault of one party, they may be held liable for compensating the other party for damages caused.[29]

CS, by contrast, are less common than CPs and are used where the completion of the

[27] IndiaCorpLaw, 'Considerations of Public Policy for the Enforcement of Foreign Arbitral Awards in India' (March 2018) <https://indiacorplaw.in/2018/03/considerations-public-policy-enforcement-foreign-arbitral-awards-india.html> accessed 24th February 2026.

[28] Devaiah, (n 16).

[29] Harvey & Arasan, M&A Essentials: A Practical Guide for Buyer, Seller, and Advisors (2025) <https://harveyarasan.com/wp-content/uploads/2025/01/MA_ElKitabiENG.pdf> accessed 24th February 2026.

transaction cannot wait for a specific regulatory or contractual formality to be completed, but where the parties agree that the relevant obligation will be fulfilled as a post-closing obligation. For example, certain FEMA reporting, including the filing of Form FC-GPR and Form FC-TRS, is an obligation that arises after closing. These are typically addressed as conditions subsequent or post-closing obligations in the SPA. Some of the major cross-border deals where closing obligations have played a significant role were:

- ***Sony Pictures Networks India-Zee Entertainment Merger Termination (2024)***[30]

  The collapse of the proposed Sony Pictures Networks India (SPNI) and Zee Entertainment Enterprises Limited (ZEEL) merger in January 2024 stands as the most significant cross-border M&A failure in recent Indian history. The Merger Cooperation Agreement, signed in December 2021, required regulatory approvals from the CCI, NCLT, SEBI, and India's Ministry of Information and Broadcasting.

  Sony terminated the agreement in January 2024, citing ZEEL's failure to meet over twenty compliance conditions by the 21 January 2024 deadline. The core issue was a cross-border governance gap: Sony's conditions reflected Japanese corporate standards that proved difficult for an Indian listed company to satisfy within India's distinct regulatory environment. Sony subsequently initiated SIAC arbitration seeking a USD 90 million termination fee; ZEEL counterclaimed for the same amount. Both parties settled out of court in August 2024, dropping all claims.[31]

- ***Case Study: Bharti Airtel's Acquisition of Stake in BT Group (2024)***[32]

  Bharti Airtel, the Indian strategic acquirer purchased 24.5% of the BT Group plc for US$4.08 billion, in 2024. The acquisition had to be examined under the UK National Security and Investment Act 2021, which imposes the mandatory notification requirements on the acquisitions of the qualifying entities in the sensitive industry such as telecommunications. The arrival of Bharti into the UK-listed telecom group as a large minority shareholder necessitated the UK government to consider national security aspects, which introduces a trail of regulatory acceptance that is not present in the Indian CCI process. The deal was closed with necessary approvals, but the case highlights that national security review processes in the host country have become a

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[30] Zee Entertainment Enterprises Ltd v Culver Max Entertainment Pvt Ltd (NCLT, Mumbai Bench, 10 August 2023).

[31] Mondaq, 'Lights, Camera, Arbitration: The Zee-Sony Merger That Wasn't' (17 September 2024) <https://www.mondaq.com/india/arbitration-dispute-resolution/1518250> accessed 24th February 2026.

[32] MergersIndia, 'Bharti Global Completes Acquisition of 24.5% Stake in BT Group' (2024) <https://mnacritique.mergersindia.com/news/bharti-global-completes-acquisition-of-24-5-stake-in-bt-group/> accessed 26th February 2026.

very real and non-frivolous closing consideration to Indian acquirers seeking outbound deals in developed countries.

VII. Conclusion

Cross-border M&A in India operates at the intersection of multiple legal regimes, regulatory frameworks, and commercial objectives. Their transaction lifecycle reveals that the contractual issues specific to cross-border M&A are not merely incremental complications of domestic deal-making, but qualitatively distinct challenges. The pre-transactional stage requires careful attention to the binding effect of term sheets and NDAs under multiple legal systems. Whereas, due diligence must account for the accessibility constraints of cross-country records while navigating data protection obligations across jurisdictions.

At the level of definitive agreements, the representations and warranties regime, indemnity provisions, MAC clauses, and governing law choices each carry implications that are amplified by the cross-border dimension. The enforceability of indemnity obligations between residents and non-residents, the limited Indian case law on MAC invocation, and the interplay between chosen governing law and mandatory Indian law provisions create a complex contractual landscape that requires precise drafting.

In a nutshell, precisely drafted and actively negotiated set of transaction documents in a cross-border deal enables both parties to understand their contractual positions clearly and to allocate the risks arising from different legal regimes in a manner that is commercially equitable and legally enforceable. As India continues to attract and generate cross-border M&A activity, the sophistication of contractual frameworks will remain a critical determinant of transactional success.